

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

11 MICHAEL TODD MASTERSON,)
12 Petitioner,) Case No. CV 12-4919-ABC(AJW)
13 vs.)
14 TIM V. VIRGA, Warden,) MEMORANDUM AND ORDER
15 Respondent.) DISMISSING PETITION¹)

17 In 1992, petitioner was convicted of attempted murder and robbery
18 in San Bernardino County Superior Court Case No. VCR 5649.² Petitioner
19 was sentenced to state prison for a term of life plus 28 years.
20 [Petition at 2].

21 On May 21, 1998, petitioner filed a habeas petition in this Court
22 in Case No. CV 98-3967-WMB(BQR). On January 19, 1999, petitioner filed
23 another habeas petition in this Court in Case No. CV 99-469-WMB(BQR),
24 which was consolidated with the 1998 case. On September 14, 1999,

26 ¹ Some of the following facts are obtained from the Court's
files concerning petitioner's prior petitions. The Court takes
judicial notice of such official court files. See Fed. R. Civ. P. 201;
27 Lee v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001).

28 || ² Although there is no "Victorville Superior Court," there is a "Victorville District" of the San Bernardino County Superior Court.

1 petitioner filed a third habeas petition in this Court in Case No. CV
2 99-9312-WMB(BQR), which also was consolidated with the 1998 case. All
3 three petitions alleged that petitioner's state court conviction in
4 case no. VCR 5649 was unconstitutional, but each alleged different
5 grounds for relief. On May 24, 2000, judgment was entered denying the
6 consolidated petitions on the merits.

7 In 2000, petitioner filed two new habeas petitions in this Court.
8 Case No. CV 00-5821-CAS(BQR) and Case No. CV 00-11519-ABC(BQR). The
9 file in Case No. CV 00-11519(ABC)(BQR) included the Ninth Circuit's
10 order denying petitioner's application for authorization to file a
11 second or successive habeas petition. Both petitions were dismissed as
12 successive, as were the subsequent petitions filed in Case Nos. EDCV
13 02-34-RT(AJW) and CV 06-6151-ABC(AJW).

14 The present petition was filed on June 5, 2012. Like the
15 petitions previously filed by petitioner, the present petition
16 challenges the validity of petitioner's 1992 conviction in case number
17 VCR 5649 in the San Bernardino County Superior Court. [Petition at 2-
18 6].

19 A federal court must dismiss a second or successive petition that
20 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A
21 federal court must also dismiss a second or successive petition raising
22 a new ground unless the petitioner can show that (1) the claim rests on
23 a new, retroactive, constitutional right or (2) the factual basis of
24 the claim was not previously discoverable through due diligence, and
25 those new facts establish by clear and convincing evidence that but for
26 the constitutional error, no reasonable factfinder would have found the
27 applicant guilty of the underlying offense. 28 U.S.C. §
28 2244(b)(2)(A)-(B). It is not the district court, however, that decides

1 whether a second or successive petition may be pursued. Rather,
2 "[b]efore a second or successive application permitted by this section
3 is filed in the district court, the applicant shall move in the
4 appropriate court of appeals for an order authorizing the district
5 court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see
6 Felker v. Turpin, 518 U.S. 651, 656-657 (1996). Absent authorization
7 from the court of appeals, this court lacks jurisdiction over this
8 second or successive petition. Greenawalt v. Stewart, 105 F.3d 1268,
9 1277 (9th Cir.), cert. denied, 519 U.S. 1102 (1997).

10 Because petitioner has not obtained leave from the Court of
11 Appeals to file a successive petition, this court lacks jurisdiction to
12 consider it. Accordingly, the petition for a writ of habeas corpus is
13 dismissed for lack of jurisdiction.

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15 Dated: June 12, 2012

Audrey B. Collins

17 Audrey B. Collins
18 United States District Judge

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